

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1888 OF 2004**

Rohidas Narayan Dhotre

...Petitioner

Vs.

The State of Maharashtra

...Respondent

Smt. Ruheeta R. Dhuru for the Petitioner.

Ms Rajshree Gadhvi, A.P.P. for the Respondent.

**CORAM : A.S.OKA, J.
DATED : JULY 21, 2005.**

P.C.:

1. Heard learned Advocate for the Applicant No.1 and learned A.P.P. for the State. An Application was made by the Petitioner under the Bombay (Furlough and Parole) Rules, 1959 for grant of furlough leave. By order dated 27th May, 2004 the competent authority rejected the Application for furlough leave. The first ground on which the Application is rejected is that there is an adverse police report. The second ground is that after the Petitioner is released on furlough leave, he will not be under the control of the surety and third ground is there is likelihood of Petitioner committing an offence.

2. The learned Advocate for the Applicant submitted that considering the police report, the order of the competent authority is illegal and Application for furlough leave could not have been rejected. The learned A.P.P. submitted that in view of adverse police report, no relief can be granted in favour of the Petitioner. The learned A.P.P. submitted that

the concerned officer who is present in the Court states that the Respondent-State has no objection if furlough leave is granted subject to condition that the Petitioner will not enter the limits of area covered by jurisdiction of Pandharpur Rural Police Station and Pandharpur City Police Station.

3. I have considered the rival submissions. The police report dated 05th/06th April, 2004 states that when the report was submitted, the process of election of Lok Sabha was going on and if furlough was granted, it will create law and order situation. In my view, the Petitioner could not have been denied the furlough leave only on the ground that the process of Loksabha election was going on. The apprehension that the Petitioner may commit offence is based only on the ground that the process of election was in progress.

There was no basis for the said apprehension.

4. The other fact which is stated in the police report is that the younger sister of the Petitioner who has shown willingness to receive the Petitioner while on furlough leave has not submitted the proof regarding his eligibility. The police report merely mentions that the Petitioner may not remain under the control of surety. The said apprehension is also without any basis. The report is vague in the sense that the report does not disclose as to which requirements of eligibility are not satisfied by the

younger sister of the Petitioner.

5. The submission made by the learned A.P.P. on the instructions of the concerned Officer regarding prohibiting the entry of the Petitioner while of furlough leave within the jurisdiction of particular police stations is devoid of any merit. The Application for furlough leave can be declined only on the grounds which are set out in Rule 4 the said Rules of 1959. Possibly only one ground mentioned in sub rule 4 of Rule 4 can be relied upon by the Respondents. The said ground is that the District Magistrate has not recommended the release on the ground of public peace and tranquility. As stated earlier this ground cannot be invoked merely because the election of the Lok Sabha is around the corner.

6. In my view, the rejection of the Application on the basis of the police report cannot be sustained. In my view, the Application filed by the Petitioner will have to be reconsidered. The re-consideration is required to the limited extent. The re-consideration will be for examining the case in so far as the surety offered by the Petitioner of his younger sister is concerned. While re-considering the Application it is obvious that the Application cannot be rejected on the other grounds which are set out in the police report dated 05th/06th April, 2004. However, it will be open for the authority to call for a fresh Police Report.

Hence, I pass the following order:

: O R D E R :

i) The impugned order dated 27th May, 2004 is quashed and set aside. The Application for furlough leave made by the Petitioner shall be re-considered by the competent authority in the light of the observations made in this order. The competent authority will decide the Application afresh within a period of ten weeks from today.

ii) Copy of this order be forwarded to the Petitioner.

JUDGE